

**AGENDA – August 31, 1999 Business Taxes Committee Meeting**  
**Motor Vehicle Fuel License Tax Regulation 1132**

<b>Action 1 – Consent</b>  Regulation 1132 <i>Shipments Out Of The State</i>	Adopt proposed language as agreed upon by staff and industry.
<b>Action 2 –</b>  Authorization to Publish	Direct the publication of the proposed amendments to Regulation 1132 as adopted in the above action.

Issue Paper Number

99-004



BOARD OF EQUALIZATION  
**KEY AGENCY ISSUE**

- ☐ Board Meeting
- ☒ Business Taxes Committee
- ☐ Customer Services Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☐ Technology & Administration Committee
- ☐ Other

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## **REVISED MOTOR VEHICLE FUEL LICENSE TAX REGULATION 1132, SHIPMENTS OUT OF THE STATE**

### **I. Issue**

Should the Board authorize the publication of amendments to Motor Vehicle Fuel License Tax Regulation 1132, Shipments Out of the State, to conform the regulation to amended sections of the Motor Vehicle Fuel License Tax Law and make other necessary changes.

### **II. Staff Recommendation**

Staff recommends that the Board authorize the publication of the attached proposed amendments to Motor Vehicle Fuel License Tax Regulation 1132, Shipments Out of the State (Attachment 1). The amendments conform the regulation to statutory changes by deleting the export certificate requirement. In addition, the proposed amendments revise the definition of “export” to more closely track the statute by removing the requirement for a contract in order to qualify for the exemption as to fuel delivered to a vessel, and require distributors to list their fuel exports on a schedule accompanying the return so that the Board can obtain vital information on fuel movement previously supplied by the export certificates. Finally, the amendments allow distributors to take a credit for exported tax-paid fuel on their returns within three months after the close of the calendar month in which the tax-paid fuel was exported.

### **III. Other Alternative(s) Considered**

Not applicable.

## **IV. Background**

Motor vehicle fuel that is exported out of the state is not subject to the Motor Vehicle Fuel License Tax. The statute exempts fuel (i) exported from the state by a distributor or (ii) fuel delivered by a distributor to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel. The Board's regulation currently requires a distributor to show proof of a contract to export as a condition of claiming an exemption under both (i) and (ii). Since a contract will likely provide the only reliable evidence of export under (i) above, it is appropriate that a contract to export be a prerequisite to qualify for the exemption. A contract is not available for a vessel export. However, substantial documentation other than a contract is available to prove that fuel was delivered to a vessel and was actually exported from this state. Therefore, the staff recommends that the current regulation be amended to remove the contract prerequisite as to fuel delivered to a vessel. The result of this proposed change is to make it easier to claim an exemption for exported fuel.

A distributor that exports ex-tax fuel may report the distribution of that fuel as exempt on its Motor Vehicle Fuel License Tax return filed with the Board. If the distributor exports tax-paid fuel, the distributor may claim a credit for the tax paid on such exported fuel on its return filed with the Board, or file a claim for refund of the tax with the Controller.

Senate Bill 612 (Chapter 76, Statutes of 1997), effective July 16, 1997, repealed Revenue and Taxation Code Sections 7402, 7403, 7404, and 7407, which required a person exporting motor vehicle fuel to file a Certificate of Export with the Board in support of each claimed exemption or credit for exported fuel. Senate Bill 612 also amended Section 8105 of the Motor Vehicle Fuel License Tax Law to extend the statute of limitations for filing with the Controller claims for refund on exported tax-paid motor vehicle fuel to three years from the date of the purchase of the motor vehicle fuel. Section 8105 previously required such claims to be filed either within three months after the month in which the fuel was exported or within thirteen months from the date the fuel was purchased. The Board has authority to establish requirements for claiming a credit on a return in lieu of filing a claim for refund with the Controller. Regulation 1132 currently requires the filing of an export certificate to support a tax exemption or credit for exported fuel and requires that any credit for the export of tax-paid fuel be claimed on a return filed within three months of the export or thirteen months of the purchase of the fuel.

## **V. Staff Recommendation**

### **A. Description of the Staff Recommendation**

Staff recommends that the Board authorize the publication of the attached proposed amendments to Motor Vehicle Fuel License Tax Regulation 1132, Shipments Out of the State. The proposed amendments conform the regulation to changes made to the Motor Vehicle Fuel License Tax Law, establish reasonable time frames in which a distributor may claim a credit on its tax return in lieu of filing a claim for refund with the Controller, and modify the regulation so that it more closely follows the statutory language of the exemption. Specifically, the amendments do the following:

- Remove the contract prerequisite for fuel delivered to a vessel and exported.
- Remove the requirement that a distributor complete and file an export certificate with the Board to support any exemption or credit claimed for the exported motor vehicle fuel.

- Add a requirement that distributors report on a separate schedule all shipments of fuel out of the state for which tax exemptions or credits are claimed on a tax return to provide the Board with fuel shipment information needed to ensure the exemptions and credits for exported fuel were properly claimed on returns.
- Change the time for taking a credit for tax-paid fuel exported to require the credit be claimed within three months after the calendar month in which the fuel was exported. Allowing the credit to be taken on a return within three months will give distributors time to determine whether fuel was exported, without unduly burdening or complicating either the distributor's or the Board's administration of the tax program.

#### **B. Pros of the Staff Recommendation**

- Removing the contract prerequisite will make it easier for distributors that deliver fuel to a vessel to document exports that qualify for an exemption from tax.
- Deleting the fuel export certificate requirement is consistent with recent statutory amendments.
- Requiring distributors to list their fuel exports on a schedule accompanying their returns captures significant fuel export information, and conforms with the Uniformity Project sponsored by the Federation of Tax Administrators, which encourages the development of consistent reporting procedures among the states.
- Allowing distributors to take a credit on their returns within three months after the close of the calendar month in which the tax-paid fuel was exported gives the distributor time to determine whether fuel was exported, without unduly burdening or complicating the Board's administration of the tax program.

#### **C. Cons of the Staff Recommendation**

- Distributors who desire to claim a credit in lieu of filing a claim for refund with the Controller will be required to take a credit on returns filed with the Board within three months after the close of the calendar month in which the tax-paid fuel was exported, rather than thirteen months from purchase, which is currently allowed as an alternative.

#### **D. Statutory or Regulatory Change**

The recommendation is to authorize the publication of the amendments to Regulation 1132.

#### **E. Administrative Impact**

No significant administrative impact is anticipated.

#### **Fiscal Impact**

##### **1. Cost Impact**

Not applicable.

## **2. Revenue Impact**

Not applicable.

## **G. Taxpayer/Customer Impact**

Distributors still will be authorized to take a credit on their returns filed with the Board within three months after the close of the calendar month in which the tax-paid fuel was exported. However, the option to take a credit on a return filed with the Board within thirteen months from the date of purchase will no longer be authorized. This change does not affect the distributor's authority to file a claim for refund with the Controller.

## **H. Critical Time Frames**

No critical time frame for revision of the regulation.

## **VI. Alternative 1**

Not applicable

Prepared by: Special Taxes Department / Fuel Taxes Division

Current as of: August 18, 1999

**Regulation 1132. SHIPMENTS OUT OF THE STATE.****(a) DEFINITIONS.**

(1) EXPORT. An export of motor vehicle fuel is the delivery or shipment of fuel by the distributor from a point in this state to a point outside of ~~the~~ this state. The fuel is not exported if it is diverted in transit or for any reason is not actually delivered out of this state, regardless of documentary evidence held by the distributor respecting delivery of the fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port, when pursuant to the contract of sale the fuel is delivered by the distributor to:

~~(A) the out-of-state point by facilities operated by the distributor,~~

~~(B) a carrier for shipment to a consignee at the out-of-state point,~~

~~(C) a customs broker or forwarding agent for shipment to a location outside of the state, or~~

~~(D) a vessel clearing from a port of this state for a port outside of this state.~~

~~The fuel is not exported if it is diverted in transit or for any reason is not actually delivered out of the state, regardless of documentary evidence held by the distributor respecting delivery of the fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.~~

(2) CARRIER. A carrier means a person or firm who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. The carrier may be hired by either the purchaser or the distributor.

(b) REQUIREMENTS. A distributor may not claim an export exemption from motor vehicle fuel license tax under Revenue and Taxation Code Section 7401(a)(2) unless the motor vehicle fuel is in fact exported and the export is accomplished in the manner specified in either (1) or (2) below:

(1) The distributor claiming the exemption from tax shows that it delivered the motor vehicle fuel to any vessel clearing from a port of this state for a port outside of this state and the fuel was actually exported from this state in the vessel; or

(2) The distributor claiming the exemption from tax shows that it exported the motor vehicle fuel from this state pursuant to a written contract requiring delivery by the distributor of the fuel to:

(A) the out-of-state point by facilities operated by the distributor,

(B) a carrier for shipment to a consignee at the out-of-state point, or

(C) a customs broker or forwarding agent for shipment to a location outside of this state.

~~(b)~~ **EXPORTS OF EX-TAX FUEL.** The tax does not apply to the distribution of ex-tax motor vehicle fuel actually exported. Stock transfers of ex-tax fuel to a point outside the state are not distributions and are not subject to the tax.

A distributor must claim the exemption for the export of ex-tax fuel on the return filed for the period in which the export was made. If a distributor fails to claim the exemption on the return and ~~If the~~ tax is erroneously paid on the ex-tax exports of fuel, a timely claim for refund must be filed with the Board pursuant to Section 8128 ~~Chapter 7, Article 2~~ of the Motor Vehicle Fuel License Tax Law in order to obtain ~~credit or~~ a refund of the amount of taxes so overpaid.

~~(e)~~ **EXPORTS OF TAX-PAID FUEL.** In lieu of claiming a refund of tax for exports of tax-paid fuel with the State Controller as provided by Section 8101(b) of the Revenue and Taxation Code, a distributor may take a credit on its return for tax-paid fuel when the fuel is exported to a point outside the state or when stock is transferred to a point outside the state. The credit must be claimed on a return filed within ~~the later of three months after the close of the calendar month in which the tax-paid fuel is exported or 13 months from the date of purchase of the fuel.~~ If the credit exceeds the taxable distributions of motor vehicle fuel for the period in which the credit may be taken, refund of the tax on the excess gallonage can only be obtained by filing a claim for refund with the State Controller.

Failure to take credit on a return filed within ~~the later of three months after the close of the calendar month in which the tax-paid fuel is exported or 13 months from the date of purchase of the fuel~~ does not give rise to a right to a file a claim for refund with the Board pursuant to Section 8126 of the Revenue and Taxation Code. Instead, claims for refund for tax-paid fuel exported must be filed with the State Controller within three years from the date of purchase of the fuel.

~~(d)~~ **DOCUMENTATION REQUIRED FOR SUPPORT.** All shipments of motor vehicle fuel to points outside of the state for which tax exemption or credit is claimed on a tax return shall be reported on a schedule accompanying the return for the period for which the exemption or credit is claimed. ~~supported by export certificates made by persons having actual knowledge of the fact that the fuel has been shipped out the state. These certificates shall be completed in quadruplicate on forms furnished by the Board. Within three months after the close of the calendar month in which the shipments are made, the original and two copies of the certificates shall be filed with the Board. The remaining copy shall be retained for audit purposes.~~

The distributor must retain documentation to support ~~the intent to deliver fuel out of state and the~~ delivery of the fuel by the distributor at an out-of-state location for all exemptions or credits. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, or meter readings. The distributor has the burden of providing the proper substantiation and documentation to support the exemption or credit.

*Authority:* Section 8251 Revenue and Taxation Code

*Reference:* Sections 7401, ~~7402, 7403, 7404~~, 7651, 8101, 8102, 8105, 8106.5, 8126, 8128, 8129, 8301 and 8305 Revenue and Taxation Code.